

Assembly Bill No. 898

CHAPTER 391

An act to amend Section 17942 of, and to repeal and add Section 17943 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 2001. Filed
with Secretary of State October 1, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 898, Leach. Income taxes: LLCs: fee adjustment.

The Personal Income Tax Law provides that a limited liability company doing business in this state shall pay annually a specified tax for the privilege of doing business in this state. In addition, that law requires that any limited liability company subject to that tax shall pay a fee, based upon total income from all sources reportable to this state, which is subject to adjustment pursuant to a study and determination by the Franchise Tax Board.

This bill would increase these fees, as specified, and would delete those provisions relating to the adjustment of that fee, as provided.

This bill would take effect immediately as a tax levy.

The people of the State of California do enact as follows:

SECTION 1. Section 17942 of the Revenue and Taxation Code is amended to read:

17942. (a) In addition to the tax imposed under Section 17941, every limited liability company subject to tax under Section 17941 shall pay annually to this state a fee equal to:

(1) Nine hundred dollars (\$900), if the total income from all sources reportable to this state for the taxable year is two hundred fifty thousand dollars (\$250,000) or more, but less than five hundred thousand dollars (\$500,000).

(2) Two thousand five hundred dollars (\$2,500), if the total income from all sources reportable to this state for the taxable year is five hundred thousand dollars (\$500,000) or more, but less than one million dollars (\$1,000,000).

(3) Six thousand dollars (\$6,000), if the total income from all sources reportable to this state for the taxable year is one million dollars (\$1,000,000) or more, but less than five million dollars (\$5,000,000). Eleven thousand seven hundred ninety dollars (\$11,790), if the total

income from all sources reportable to this state for the taxable year is five million dollars (\$5,000,000) or more.

(5) (A) This subdivision shall apply to taxable years beginning on or after January 1, 1997.

(6) The changes made to this subdivision by the act adding this paragraph shall apply to taxable years beginning on or after January 1, 2001.

(b) (1) For purposes of this section, “total income” means gross income, as defined in Section 24271, plus the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer. However, “total income” shall not include allocation or attribution of income or gain or distributions made to a limited liability company in its capacity as a member of, or holder of an economic interest in, another limited liability company if the allocation or attribution of income or gain or distributions are directly or indirectly attributable to income that is subject to the payment of the fee described in this section.

(2) In the event a taxpayer is a commonly controlled limited liability company, the total income from all sources reportable to this state, taking into account any election under Section 25110, may be determined by the Franchise Tax Board to be the total income of all the commonly controlled limited liability company members if it determines that multiple limited liability companies were formed for the primary purpose of reducing fees payable under this section. A determination by the Franchise Tax Board under this subdivision may only be made with respect to one limited liability company in a commonly controlled group. However, each commonly controlled limited liability company shall be jointly and severally liable for the fee. For purposes of this section, commonly controlled limited liability companies shall include the taxpayer and any other partnership or limited liability company doing business (as defined in Section 23101) in this state and required to file a return under Section 18633 or 18633.5, in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

(c) The fee assessed under this section shall be due and payable on the date the return of the limited liability company is required to be filed under Section 18633.5, shall be collected and refunded in the same manner as the taxes imposed by this part, and shall be subject to interest and applicable penalties.

SEC. 2. Section 17943 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 17943 is added to the Revenue and Taxation Code, to read:



17943. It is the intent of the Legislature that the amount of the annual fee described in Section 17942 shall apply to the taxable year beginning January 1, 2001, and subsequent taxable years, notwithstanding the results of any study prepared by the Franchise Tax Board and submitted to the Joint Legislative Budget Committee pursuant to former Section 17943.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

